A.F.R.

HIGH COURT OF CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Dilip Raosahob Deshmukh, J.

Second Appeal No. 30 of 2007

Appellant Defendant : Munu son of Anjor Singh, Caste: Agharia aged about 36 years Occupation: Agriculturist resident of village-Pirda Patwari Halka No.36, Tehsil and District Mahasamund (CG)

Versus

Respondent Plaintiff

: 1. Jagdish son of late Petpal aged about 52 years

: 2. Birendra Kumar son of late Petpal aged about 40 years

: 3. Dilip Kunwar, widow of late Petpal, All Caste of Agharia Occupation: agriculturist residents of village-Pirda, Patwari Halka No.36, Tehsil and District Mahasamund (CG)

: 4. State of Chhattisgarh, through Collector, Mahasamund, District Mahasamund (CG)

Second appeal under Section 100 of the C.P.C.

Present: Shri Sunil Sahu, counsel for the appellant.
Shri Akhil Agrawal, PL for State/respondent No.4.

ORAL ORDER

(Passed on 17.11.2007)

Heard on admission.

(2) The appellant is aggrieved by the dismissal of his appeal (civil appeal No.14-A/2004) passed in judgment and decree dated 30.11.2006 by the II[nd] Additional District Judge, Mahasamund (CG) on the ground that it was barred by limitation.

(3) Brief facts are that in civil suit No.111-A/1999, Civil Judge, Class-I, Mahasamund (CG) vide judgment and decree dated 21.9.2000 decreed the suit in favour of the plaintiff. Copy of the judgment was applied for on 23.9.2000 and the same was delivered on 9.2.2001. Appeal was preferred by defendant No.6 Manu alone before the lower appellate Court on 27.3.2004. The remaining defendants No.1 to 5 and 7 were not impleaded even as

respondents. An application under Section 5 of the Limitation Act was also filed in which, it was stated that the appellant had entrusted to his elder brother Manbodh, the work of filing the appeal and all the necessary papers were given to him by the appellant. It was further stated that Manbodh was a "*Sadhu*" (saint) and his whereabouts were not known since about 3 years. After lapse of over 3 years, the appellant came to Mahasamund and made efforts to find out from the counsel who told him that no appeal had been filed. It was further stated in para 9 of the appeal that father of the appellant had on 8.3.2004, informed the appellant that no appeal had been preferred and therefore, on 10.3.2004, certified copy of the judgment and decree of the lower appellate Court was obtained. The lower appellate Court dismissed the appeal on the ground of limitation by holding that the appellant had failed to show sufficient cause for delay in filing the appeal.

(4) Learned counsel for the appellant has placed reliance on ***N. Balakrishnan Vs. M. Krishnamurthy,* 1988 (7) Supreme Court Cases 123** and submitted that the lower appellate Court ought to have taken a liberal view while considering the application under Section 5 of the Limitation Act to advance substantial justice and ought not to have rejected the application in a mechanical manner. .

(5) Having considered the submission of the learned counsel for the appellant, I have perused the record. In ***N. Balakrishnan*** (supra), the Apex Court observed as under:

> "The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage

caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

Condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. The words "sufficient cause" under section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice."

(6) Testing the matter at hand on the touchstone of ***N. Balakrishnan*** (supra), the contention of the appellant that the certified copy of the trial Court's judgment was obtained for the first time on 10.3.2004 is falsified from a perusal of the certified copy of the trial court's judgment which shows that immediately after the judgment was passed by the trial Court on 21.9.2000, copy was applied for on 29.9.2000 and was delivered on 9.2.2001. Affidavit of Manbodh or the counsel, who informed the appellant that no appeal was filed, was not submitted. Explanation by the appellant regarding entrustment of papers to Manbodh, a saint whose whereabouts were not certain, for preferring appeal does not inspire confidence or appear bona fide or natural. It is also beyond comprehension as to why none of the defendants No. 1 to 5 and 7 were impleaded in this appeal. In Civil Suit No. 111-A/1999, plaintiffs – Jagdish Kumar and two others had filed a suit for partition and possession of the ancestral suit property on the pleading that property mentioned in schedule – B was purchased *benami* in the name of defendant No.1 – Anjor Singh, father of the appellant herein. It was also pleaded that Anjor Singh had, by an unregistered deed, distributed the property between the defendants No. 4 & 5 and defendant No.6 – Manu, the present appellant. The trial Court held that the property mentioned in schedule – A, B, C & D was the joint property of the plaintiffs and Anjor Singh and the plaintiffs were entitled to partition and possession of $4/5^{th}$ share of the suit property. In this scenario, the non-impleadment of Anjor Singh, the defendant No.1 and the other defendants No.2 to 5 by the appellant in the appeal leads to an inference that these defendants, particularly, Anjor Singh, the father of the appellant herein were not aggrieved by the judgment and decree passed by the trial Court. Non-impleadment of these defendants was also fatal to the appeal because these defendants were necessary parties. Thus, the fact of preferring an appeal after a lapse of over 3 years by the appellant/defendant No.6 was nothing but a dilatory tactics and smacks of mala fides.

(7) It appears that the appellant after obtaining the certified copy of the trial court's judgment and decree on 9.2.2001 remained in slumber for a period of over three years. The story of obtaining a certified copy for the first time on 10.03.2004 is false because such a certified copy is not on record. There is thus reasonable ground to think that delay was occasioned deliberately and was not bona fide.

(8) Thus, the appellant had failed to show sufficient cause for filing the appeal before the lower appellate Court after an inordinate delay of $3^{1/2}$ years. The lower appellate Court was thus justified in not taking a liberal view and rejecting the prayer for condonation of delay in filing the appeal and dismissing the appeal as barred by limitation. No substantial question of law therefore, arises for determination in this second appeal, which is accordingly dismissed, at the stage of admission.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya